

OUTGOING TELEGRAM Department of State

INCL. DATE: ☐ CORRECT
☐ CHANGE TO

UNCLASSIFIED

~~CONFIDENTIAL~~

13500

39

Oct 27 2 25 PM '62

Orig

ACTION:

L

CIRCULAR 779

SS

G

SP

H

SAL

AF

ARA

EUR

FE

NEA

LO

E

P

US IA

NSC

INR

CIA

NSA

OSD

ARMY

NAVY

AIR

JUS

TRSY

RMR

If asked for basis in international law of quarantine interdicting carriage of offensive military material to Cuba, you may draw on following analysis:

1. Fundamental source for authority for quarantine at international law is Rio Treaty. Regional action to protect peace and security is consistent with UN Charter.

Rio Treaty. OAS Council met October 23 and, in accordance Article 12 of Rio Treaty, constituted itself as an Organ of Consultation. Organ concluded, after considering evidence of Soviet missiles in Cuba, that there was situation that might "endanger the peace of America". To meet this threat, it adopted a Resolution recommending that Member States

"take all measures, individually and collectively, including the use of armed force, which they may deem necessary to insure that the Government of Cuba cannot continue to receive from the Sino-Soviet powers military material and related supplies which may threaten the peace and security of the Continent."

Rio Treaty, with related documents, constitute Inter-American system. That Treaty provides for collective action, both in case of armed attack and in case any American State is threatened "by an aggression which is not an

L:LMarks:jd:kfr

Telegraphic transmittal for
classification approved WFI

Abram Chayer

IO - Mr. Gardner

S/S-WSlater

UNCLASSIFIED

REPRODUCTION FROM THIS
COPY IS PROHIBITED
UNLESS "UNCLASSIFIED"

DS-322

87 - 001 0217

22

REF. PRODUCED BY GOVERNMENT INSTITUTE

UNCLASSIFIED
~~RESTRICTED~~

armed attack . . . or by any other fact or situation that might endanger the peace of America". In such cases, American Republics act through Organ of Consultation, which is comprised of Foreign Ministers or representatives specifically designated for the purpose. Article 8 of Treaty lists measures which may be taken by Organ of Consultation to meet threat to the peace of America. This list specifically includes "use of armed force". Thus, action under Rio Treaty in recommending quarantine falls readily within framework of authority and procedures prescribed by Treaty. You should emphasize

that Cuba remains a party to the Rio Treaty and is bound by its terms. She accepted the authority and assented to the procedures prescribed by Rio Treaty.

United Nations Charter. Charter assigns to regional organizations an important role in carrying out purposes of United Nations. Article 52(1) specifically contemplates use of "regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action."

Importance of regional agencies in maintenance of peace and security was recognized in earliest conceptions of United Nations. Moreover, Article 52 and other Charter provisions dealing with regional organizations were developed at San Francisco with Inter-American system specifically in mind.

Charter limits activities of regional organizations by providing, in Article 52 (1), that such activities must be "consistent with the Purposes and Principles of the United Nations." The Treaty plainly meets this requirement. Signatories expressly reiterated "their will to remain united in an Inter-American system consistent with the purposes and principles of the United Nations." The Resolution and its implementation are also in accordance with Charter's purposes and principles. The recommended

UNCLASSIFIED

~~RESTRICTED~~

INTER-AMERICAN SYSTEM OF PEACE

~~UNCLASSIFIED~~
~~CONFIDENTIAL~~

measures are designed, in opening words of Charter, "to maintain international peace". Moreover, Resolution is consistent with Article 2(4) of UN Charter, which obligates Members to refrain from "threat or use of force against the territorial integrity of political independence of any state . . ." Defensive quarantine to restrain introduction of offensive weapons into Cuba does not threaten political integrity or political independence of Cuba. It is establishment of offensive missiles in Cuba which constitutes threat in violation of Article 2(4), not the defensive quarantine to contain that threat.

Quarantine measures authorized under Rio Treaty are not "enforcement action" requiring Security Council authorization under Article 53 of the Charter. In the past, inter-American collective sanctions against Trujillo and Castro regimes have not been so regarded, even though taken by a regional organization to deal with a threat to peace. The present inter-American resolution is recommendatory on its face; indeed under the Rio Treaty a State cannot be required to use force without its consent (Article 20). Recommendatory measures of this character, even though they may involve the use of force, cannot be considered "enforcement action." The language and structure of the Charter, and the most recent opinions of the International Court of Justice, confirm this conclusion.

2. US does not consider measures taken in Cuba to constitute a blockade. Both "quarantine" and traditional blockade may involve interruption of maritime commerce through use of naval forces. But in the US view differences between measures taken last week and blockade significant enough to justify use of different word. "Quarantine" is selective, and is directed at shipment of specialized strategic weapons. Traditional

~~UNCLASSIFIED~~
~~CONFIDENTIAL~~

~~UNCLASSIFIED~~
~~CONFIDENTIAL~~

blockade normally strikes at ordinary maritime commerce. Moreover, quarantine designed to deal with threat to peace, found to be such by regional arrangement having jurisdiction in region. By contrast, blockade has traditionally been carried out in wartime by belligerent in effort to secure maximum ~~target~~ impact on enemy's economy.

END

| | | | |
|----------------|-------------|---------------------------|------|
| USRO | Tegucigalpa | Trinidad, The West Indies | |
| Buenos Aires | New Delhi | Tanganyika | |
| Canberra | Tokyo | Manila | RUSK |
| Brussels | Rome | Karachi | |
| La Paz | Mexico City | Cairo | |
| Rio de Janeiro | The Hague | Lagos | |
| Ottawa | Wellington | Belgrade | |
| Bogota | Managua | | |
| San Jose | Cairo | | |
| Copenhagen | Karachi | | |
| Santo Domingo | Panama | | |
| Quito | Asuncion | | |
| San Salvador | Lima | | |
| BONN | Lisbon | | |
| Athens | Stockholm | | |
| Guatemala | Akiba | | |
| Port au Prince | Caracas | | |

~~UNCLASSIFIED~~
~~CONFIDENTIAL~~